



FEDERAL ELECTION COMMISSION

Washington, DC 20463

Vincent DeVito  
Bowditch & Dewey, LLP  
300 New Jersey Ave., NW  
Suite 900  
Washington, DC 20001

MAR - 3 2017

RE: MUR 7064

Dear Mr. DeVito:

On May 17, 2016, the Federal Election Commission notified your clients, Franklin and Lee, Inc., Patriots for America and Adam C. McLain in his official capacity as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act"). A copy of the complaint was forwarded to your clients at that time. Upon further review of the allegations contained in the complaint and information supplied by you, the Commission, on February 22, 2017, voted to dismiss the allegations that Franklin and Lee, Inc., violated 52 U.S.C. § 30122 of the Act and that Patriots for America and Adam C. McLain in his capacity as treasurer violated 52 U.S.C. §§ 30104 & 30122, provisions of the Act. The Commission closed the file on the same day.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016). The Factual and Legal Analysis, which explains the Commission's finding, is enclosed for your information.

If you have any questions, please contact Christopher L. Edwards, the attorney assigned to this matter, at (202) 694-1568.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Allen", is positioned above the typed name.

Mark Allen  
Assistant General Counsel

Enclosure:  
Factual and Legal Analysis

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**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

RESPONDENTS: Patriots for America and Adam C. McLain in his official capacity as treasurer  
Adam C. McLain  
Franklin and Lee, Inc.

MUR 7064

**I. INTRODUCTION**

The Complaint alleges that Patriots for America ("Patriots") violated the Federal Election Campaign Act of 1971, as amended (the "Act"), by failing to report certain receipts and disbursements.<sup>1</sup> The Complaint also alleges that Franklin and Lee, Inc. ("Franklin and Lee"), Patriots' sole contributor, made contributions in the name of another.<sup>2</sup>

**II. FACTUAL AND LEGAL ANALYSIS**

**A. Factual Background**

Patriots registered with the Commission as an independent-expenditure-only committee on November 5, 2015.<sup>3</sup> According to its website, Patriots' sole goal was to oppose the candidacy of Eric Greitens, a candidate in the Missouri Republican gubernatorial primary in 2016.<sup>4</sup> The Complaint includes a number of Patriots' internet advertisements, direct mailers, webpages, and YouTube video screenshots, all of which relate to Greitens or the Missouri gubernatorial race.<sup>5</sup>

<sup>1</sup> Compl. at 1-3.

<sup>2</sup> *Id.*

<sup>3</sup> FEC Form 1, Statement of Organization, Patriots for America (Nov. 5, 2015), available at <http://docquery.fec.gov/pdf/861/201511060300031861/201511060300031861.pdf>.

<sup>4</sup> See <http://www.ericgreitens.com/> ("We DO NOT support or endorse any particular candidate in any state gubernatorial race, we are only opposed to one: Eric Greitens, who seeks to deceive voters and misrepresent his liberal ideology as 'new conservative' values.") (emphasis in original). Greitens won the gubernatorial primary and general elections.

<sup>5</sup> Compl., Exs. A-E.

1 Patriots' activity occurred prior to the August 2, 2016, primary election.<sup>6</sup> While Patriots'  
2 disclosure reports and other available information indicate that its activity has been solely at the  
3 state level, it has nonetheless registered with and reported to the Commission.<sup>7</sup>

4 The Complaint first alleges that Patriots failed to disclose receipts or disbursements in its  
5 2015 Year-End Report, despite making disbursements during that year.<sup>8</sup> The Complaint includes  
6 several communications to support its claim that Patriots made disbursements "on or about  
7 November 2015."<sup>9</sup> The Complaint reasons that because Patriots made disbursements in 2015  
8 that it must have also accepted receipts during that year.<sup>10</sup> Patriots, however, disclosed only  
9 debts totaling \$86,224 owed to three creditors: \$56,234.89 to Draper Sterling, LLC, ("Draper  
10 Sterling") for business consulting;<sup>11</sup> \$10,000 to Adam C. McLain ("McLain"), Patriots'  
11 treasurer, for research; and \$19,989.11 to Semcasting, Inc., for digital advertising.<sup>12</sup> The  
12 Complaint questions how Patriots could owe a vendor for digital advertising without having  
13 made a disbursement for digital advertising.<sup>13</sup>

<sup>6</sup> See 2015 Year-End Report, Patriots for America (Jan. 29, 2016); 2016 October Quarterly Report, Patriots for America (Oct. 14, 2016). According to the October Quarterly Report, Patriots' latest disbursement during that reporting period occurred on August 19, 2016. Patriots disclosed no activity on its 2016 Post-General Report.

<sup>7</sup> The Missouri Ethics Commission's ("MEC") campaign finance database indicates that Patriots has not registered with the MEC, and a complaint was reportedly filed with the MEC alleging that Patriots was required to register with that agency because it spent more than \$1,500 on expenditures in connection with a Missouri state election. See <http://static.politico.com/40/97/9b7cc791445da70c99e20b52211e/mec-complaint-filed-against-patriots-for-america.pdf>.

<sup>8</sup> Compl. at 1-2; see also 2015 Year-End Report, Patriots for America (Jan. 29, 2016).

<sup>9</sup> Compl. at 1-2, Exs. A-E.

<sup>10</sup> See *id.* at 1-2.

<sup>11</sup> Draper Sterling was incorporated in Delaware on December 2, 2015. See <https://icis.corp.delaware.gov/Ecorp/EntitySearch/NameSearch.aspx>.

<sup>12</sup> 2015 Year-End Report, Sched. D., Patriots for America. The available information indicates that Patriots also sent direct mail through the United States mail, which is not reflected in this description. See Compl., Ex. B.

<sup>13</sup> Compl. at 2.

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1 The Complaint also alleges that Patriots' 2016 April Quarterly Report listed no  
2 contributions, but showed \$84,250 in "other federal receipts."<sup>14</sup> These receipts all came from  
3 Franklin and Lee,<sup>15</sup> a Virginia-based 501(c)(4) that was founded by McLain.<sup>16</sup> The Complaint  
4 alleges that Franklin and Lee is registered at the same Virginia residential address as Patriots and  
5 was formed three weeks before it began contributing to Patriots.<sup>17</sup> The Complaint questions how  
6 Patriots was able to acquire \$84,250 in other federal receipts when it otherwise had not received  
7 any contributions.<sup>18</sup> The Complaint further alleges that Franklin and Lee is a shell organization  
8 that was formed to obfuscate Patriots' donors.<sup>19</sup>

9 Patriots responds that its 2015 Year-End Report was accurate and that Patriots received  
10 no receipts or disbursements in 2015.<sup>20</sup> Patriots admits that its 2016 April Quarterly Report  
11 contained an "administrative error" because it reported the \$84,250 it received from Franklin and  
12 Lee during that quarter on the line for other federal receipts (line 17) instead of the line for  
13 contributions (line 11(a)).<sup>21</sup> Patriots corrected the error after the Complaint was filed.<sup>22</sup>  
14 Franklin and Lee's Response asserts that the Commission lacks jurisdiction over it because the

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<sup>14</sup> *Id.*; 2016 April Quarterly Report, Patriots for America (Apr. 13, 2016).

<sup>15</sup> *See id.*

<sup>16</sup> *See* Resp. of Patriots for America and Adam McLain in his capacity as treasurer ("Resp. of Patriots for America") at 4-5 (Sept. 2, 2016); State of Delaware Certificate of Incorporation, Franklin and Lee, Inc. (Dec. 18, 2015).

<sup>17</sup> Compl. at 2-3.

<sup>18</sup> *Id.* at 2.

<sup>19</sup> *Id.* at 2-3.

<sup>20</sup> *See* Resp. of Patriots for America at 2.

<sup>21</sup> *See id.*

<sup>22</sup> *See id.*; Amend. 2016 April Quarterly Report, Patriots for America (July 12, 2016).

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1 Complaint did not name it as a respondent, does not allege facts that show that it violated the  
2 Act, and does not provide sufficient notice of the allegations against it.<sup>23</sup>

3 B. Legal Analysis

4 i. Alleged Reporting Violations

5 Political committees registered with the Commission must file reports disclosing their  
6 receipts and disbursements.<sup>24</sup> The Complaint first alleges that Patriots failed to report its receipts  
7 and disbursements during 2015.<sup>25</sup> Patriots' 2015 Year-End Report discloses that all of Patriots'  
8 2015 activity was financed on credit.<sup>26</sup> Schedule D from that report named each creditor,  
9 identified the amount that Patriots owed that creditor, and briefly described each debt.<sup>27</sup> In 2016,  
10 Patriots disclosed contributions from Franklin and Lee,<sup>28</sup> which were used to pay most of that  
11 debt.<sup>29</sup> The available information thus does not show that Patriots' 2015 activity was unreported.

12 By contrast, Patriots' original 2016 April Quarterly Report incorrectly reported Patriots'  
13 contributions, totaling \$84,250, as "other federal receipts."<sup>30</sup> Patriots has since amended the  
14 report to show the receipts as contributions.<sup>31</sup> In light of the fact that Patriots disclosed the

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<sup>23</sup> Resp. of Franklin and Lee, Inc. (Aug. 8, 2016).

<sup>24</sup> See 11 C.F.R. § 104.3. See also 52 U.S.C. § 30104.

<sup>25</sup> See Compl. at 2.

<sup>26</sup> 2015 Year-End Report, Patriots for America.

<sup>27</sup> *Id.*, Sched. D. See 52 U.S.C. § 30104(b)(8); 11 C.F.R. § 104.3(d).

<sup>28</sup> See Amend. 2016 April Quarterly Report, Patriots for America (July 15, 2016).

<sup>29</sup> Patriots' Post-General Report shows that it still owes a \$2,234.89 debt to Draper Sterling.

<sup>30</sup> See April Quarterly Report at 3, Line 17, Patriots for America (Apr. 13, 2016); Resp. of Patriots for America at 2.

<sup>31</sup> See Amend. 2016 April Quarterly Report, Patriots for America (July 12, 2016).

1 activity, albeit on the wrong line, and later corrected the error, the Commission will exercise its  
2 prosecutorial discretion and dismiss the reporting violation.<sup>32</sup>

3 ii. Alleged Contributions in the Name of Another

4 The Act prohibits a person from making a contribution in the name of another, knowingly  
5 permitting his or her name to be used to effect such a contribution, or knowingly accepting a  
6 contribution made by one person in the name of another person.<sup>33</sup> The term “person” for  
7 purposes of the Act includes partnerships, corporations, and other organizations.<sup>34</sup> The  
8 Complaint alleges that the contributions to Patriots from Franklin and Lee were made in the  
9 name of another because Franklin and Lee is a shell organization being used to conceal the  
10 names of Patriots’ contributors.<sup>35</sup>

11 The facts here are unusual—Patriots registered and reported to the Commission, despite  
12 focusing its activity solely on a state election, and did not register with or report to the state of  
13 Missouri.<sup>36</sup> Further, Patriots financed its initial activity on credit and then paid its debt after  
14 receiving contributions from one contributor, Franklin and Lee,<sup>37</sup> an entity formed by Patriots’

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<sup>32</sup> See *Heckler v. Chaney*, 470 U.S. 821 (1985). The Complaint also alleges that Patriots’ \$56,234.89 debt to Draper Sterling for business consulting is “highly unusual” given Patriots’ status as an independent-expenditure-only committee with no money, and alleges that the report on that transaction was either misleading or wrong. Such alleged “unusual” activity, with nothing more, does not provide sufficient reason to believe that Patriots reported false or misleading information.

<sup>33</sup> 52 U.S.C. § 30122; 11 C.F.R. § 110.4(b).

<sup>34</sup> 52 U.S.C. § 30101(11); 11 C.F.R. § 100.10.

<sup>35</sup> Compl. at 2-3.

<sup>36</sup> See *supra* n.7.

<sup>37</sup> See 2015 Year-End Report, Patriots for America; Amend. 2016 April Quarterly Report, Patriots for America (July 15, 2016).

7 dismiss the allegation that the Respondents violated 52 U.S.C. § 30122.<sup>39</sup>

<sup>39</sup> The Commission believes that because Patriots focused its activity at the state level, the MEC is the most appropriate agency to address it. The Complainant in the matter filed a complaint with the MEC, *see supra* n.7, so the Commission does not believe it is necessary to report this matter to the MEC. *See* 52 U.S.C. § 30107(a)(9).